

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

D'ANNA WELSH,

Plaintiff,

v.

Case No.: 2:22-cv-216-JLB-NPM

WILLIAM V. MARTINEZ, JR.,  
and KELLY MARTINEZ,

Defendants.

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**ORDER**


This matter comes before the Court on Plaintiff's Motion for Evidentiary Sanctions (Doc. 86). In short, and without diving into the details, the Motion alleges that Defendants have committed various discovery violations, including that Mrs. Martinez "refused to search for discoverable communications even after the Court compelled her to comply and after the prejudicial effect of her noncompliance was shown" and that Dr. Martinez "affirmatively deleted his responsive communications which the Court ordered him to produce." (Doc. 86 at 7). Accordingly, Plaintiff requests that the Court, among other things, preclude Defendants from submitting evidence in opposition to Count I and Count II of Plaintiff's Complaint and "strike Defendants' answer, in part, by striking all of Defendants' affirmative defenses . . . and/or draw an adverse inference that the deleted communications would have supported Plaintiffs' claims and detrimental to Defendants' defenses." (*Id.*) Defendants filed a response (Doc. 94) indicating that all documents and communications requested have been provided (*id.* at 12) and

that Dr. Martinez testified during his deposition that “he began clearing communications off his cellular device relating to his family because he discovered other staff and employees at his employment were snooping through his cellphone in February 2022” (*id.* at 17). The parties’ contentions are often contradictory and require this Court to make credibility determinations.

Accordingly, it is **ORDERED** that:

1. Plaintiff’s Motion for Evidentiary Sanctions (Doc. 86) is **REFERRED** to United States Magistrate Judge Nicholas Mizell for an evidentiary hearing.
2. Judge Mizell will set the date, time, and protocol for conducting the evidentiary hearing.
3. Because the Motion requests sanctions that, if granted, could affect this Court’s ruling on Plaintiff’s Motion for Summary Judgment on First Amended Complaint (Doc. 88), the Court **DENIES without prejudice** the Motion for Summary Judgment. Plaintiff may re-file her Motion for Summary Judgment after Judge Mizell enters an order on the Motion for Evidentiary Sanctions and after any applicable objection period has passed.
4. Plaintiff’s Motion to Clarify Minute Entry Regarding Plaintiff’s Fully-Briefed and Pending Motion for Summary Judgment (Doc. 109) is **DENIED as moot**.

**ORDERED** at Fort Myers, Florida on September 5, 2023.

  
**JOHN L. BADALAMENTI**  
UNITED STATES DISTRICT JUDGE